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COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT **4-1**

PLANNING COMMISSION

MEETING DATE January 13, 2005	CONTACT/PHONE Ryan Hostetter (805) 788-2351	APPLICANT Cambria Community Services District	FILE NO. DRC2004-00093
SUBJECT Request by Cambria Community Services District for a Development Plan/Coastal Development Permit for the removal of two existing 103,000 gallon water tanks, the construction of two new 550,000 gallon water tanks, and the relocation of an existing electrical control panel with overhead electric service. The new water tanks are proposed to be located on the existing tank site, and a 10,000 square foot easement area from the property to the north (APN 013,111,005). This project will include the removal of 27 pine and 34 oak trees. This project is located at the terminus of Manor Way (988 Manor Way) in the Pine Knolls residential neighborhood in the community of Cambria, in the North Coast planning area (APN 013,301,018 and a portion of APN 013,111,005).			
RECOMMENDED ACTION Disapprove the request for Development Plan/Coastal Development Permit DRC2004-00093 based on the findings listed in Exhibit A			
ENVIRONMENTAL DETERMINATION The project is exempt from environmental review pursuant to California Environmental Quality Act section 21080 (b) (5) and State CEQA Guidelines section 15270 (ED04-260).			
LAND USE CATEGORY Residential Single Family & Rural Lands	COMBINING DESIGNATION Archaeologically Sensitive Area, Local Coastal Program Area, Terrestrial Habitat, and Sensitive Resource Area	ASSESSOR PARCEL NUMBER 013,301,018 & portion of 013,111,005	SUPERVISOR DISTRICT(S) 2
PLANNING AREA STANDARDS: None Applicable			
LAND USE ORDINANCE STANDARDS: Setbacks, Height, Sensitive Resource Area, Public Utility Facilities, Environmentally Sensitive Habitats, Terrestrial Habitat <i>Does the project conform to the Land Use Ordinance Standards: See Discussion</i>			
EXISTING USES: The existing Residential Single Family site contains two existing water tanks, and the 10,000 square foot Rural Lands easement to the north and east is within undeveloped Environmentally Sensitive Habitat Area and was, until recently, part of a conservation easement.			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Rural Lands/undeveloped <i>South:</i> Residential Single Family/residential <i>East:</i> Residential Single Family/residential <i>West:</i> Residential Single Family/residential			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

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OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Public Works, Environmental Health, Cambria Community Services District (for fire and water), North Coast Advisory Council, and EcoSlo	
TOPOGRAPHY: Site is nearly level	VEGETATION: Monterey Pines, Coast Live Oaks,
PROPOSED SERVICES: Water supply: San Simeon Creek Wellfield Sewage Disposal: N/A Fire Protection: CCSD	ACCEPTANCE DATE: December 2, 2004

BACKGROUND

The project before you is a Development Plan/Coastal Development Permit to allow for the replacement of an existing public facility with a new public utility facility in a Residential Single Family land use category. The project site includes the existing tank site which is zoned Residential Single Family, and a 10,000 square foot easement on the property to the north and east (APN 013,111,005) which is zoned Rural Lands and is within a Sensitive Resource Area (SRA). The project includes the removal of two existing tanks and replacing them on a portion of the existing tank site, and the 10,000 square foot easement to the north and east. This site expansion will include the removal of sensitive habitat in an area designated as a "Sensitive Resource Area" with "Terrestrial Habitat" (CZLUO 23.07.164, 23.07.170, and 23.07.176).

The Cambria Community Services District (CCSD) applied for an Emergency Permit for the same project on October 1, 2004. That emergency permit was issued on October 8, 2004, and later rescinded by the Planning Director on October 22, 2004. The CCSD has applied for this Development Plan/Coastal Development Permit on November 3, 2004.

Staff cannot support the proposed project because of the permanent impacts to an Environmentally Sensitive Resource Area (ESHA). Staff feels that a feasibility study of alternatives, demonstrating that no other less environmentally damaging alternative exists, should have been submitted by the applicant pursuant to section 23.08.288 d of the Coastal Zone Land Use Ordinance. As of the date of writing this staff report, no such feasibility study or alternative analysis has been submitted by the applicant.

PROJECT ANALYSIS

Ordinance Compliance:

Setbacks: The North Coast Area Plan states the setback requirements for Tract 112 of Pine Knolls are per the Coastal Zone Land Use Ordinance. Required setbacks are as follows: Front 25' and Side 5'. The rear setback is on the expansion of the property that is located within Rural Lands and will require a 10' setback. *The project complies with these standards.*

Height: The height for residential uses within the North Coast Area Plan is 28' however the proposed project is not a residential use and is subject to the Coastal Zone Land Use requirements for height. The maximum height for the water tanks shall be 35' which is measured from average natural grade. *The project complies with this standard at 32'.*

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Public Utility Facilities Development Standards:

1. **Environmental Quality Assurance:** An environmental quality assurance program covering all aspects of construction and operation shall be submitted prior to construction of any project component. This program will include a schedule and plan for monitoring and demonstrating compliance with all conditions required by the Development Plan. Specific requirements of this environmental quality assurance program will be determined during the environmental review process and Development Plan review and approval process.
2. **Clearing and revegetation:** The land area exposed and the vegetation removed during construction shall be the minimum necessary to install and operate the facility. Topsoil will be stripped and stored separately. Disturbed areas no longer required for operation will be regarded, covered with topsoil and replanted during the next appropriate season.
3. **Fencing and screening:** Public Utility Facilities shall be screened on all sides. An effective visual barrier will be established through the use of a solid wall, fencing and/or landscaping. The project proposes to use fencing and landscaping around the project site to help screen
4. **Limitation on use, sensitive environmental areas:** Uses shall not be allowed in sensitive areas such as on prime agricultural soils, Sensitive Resource Areas, Environmentally Sensitive Habitats, or Hazard Areas, unless a finding is made

Sensitive Resource Area: Projects located within a SRA Combining Designation can only be approved if special findings can be made. The findings are as follows:

1. **Required Findings 23.07.164 e:** Any land use permit application within a SRA shall be approved only where the review authority can make the following required findings:
 - a. The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the SRA designation, and will preserve and protect such features through the site design. The project as proposed does not meet this finding and will create a significant adverse effect on the Monterey Pine Forest.
 - b. Natural features and topography have been considered in the design and siting of all proposed physical improvements. This project does not meet this project because it can be re-designed to avoid the SRA.
 - c. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource. This project does not meet this finding because the project can be redesigned or relocated to create less impact on the Monterey Pine Forest.

The proposed project does not meet all of these findings because the project can be redesigned, or relocated to avoid the Sensitive Resource Area. The project as proposed will remove sensitive vegetation, remove habitat, and disrupt the continuance of the resources in the area.

Environmentally Sensitive Habitat Area: Like the SRA Combining Designation, Environmentally Sensitive Habitats also contain Required Findings (23.07.170 b). Approval of a land use permit

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for a project within *or adjacent* to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:

1. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat. The proposed project is inconsistent with this required finding because it will remove sensitive habitat. While replacement of the habitat is proposed, the replacement is located off site which will not help the continuance of the biological species on the project site. The project as proposed will have a negative impact to the sensitive resources on the project site.
2. The proposed use will not significantly disrupt the habitat. This project will significantly disrupt the habitat on site because it will remove approximately 27 Monterey Pine trees and 34 Coast Live Oaks, which is inconsistent with the intent of this policy.

Terrestrial Habitat: The project site also contains Terrestrial Habitat which is a Combining Designation in place to protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal. Development within a Terrestrial Habitat shall be sited to minimize disruption of the habitat. The project is inconsistent with this standard because a section of undisturbed Terrestrial Habitat will be permanently removed, and adverse impacts to the "whole" ecosystem will result.

Coastal Plan Policies - Hazard Policy 9 (high fire risk areas): "Fire hazard areas shall be defined as those having potential for catastrophic fire. The county shall designate and show on the Hazards maps those high risk fire areas as delineated by the State Division of Forestry. New residential development in high risk fire areas shall be required to be reviewed and conditioned by the Fire Warden to ensure that building materials, access, brush clearings and water storage capacity are adequate for fire flow and fire protection purposes." This policy is not applicable to this proposed project for two reasons: 1. The policy is directed at "new residential development", and 2. The project site is within the "moderate" fire hazard area as mapped by the county.

COMMUNITY ADVISORY GROUP COMMENTS: North Coast Advisory Council: No comments received as of 12/14/2004

AGENCY REVIEW:

Public Works- Recommend approval, no concerns. Need Temporary erosion and sedimentation control measures.

Environmental Health – No comments received as of 12/14/2004.

Cambria Community Services District (for water and fire)-No Comments received as of 12/14/2004.

EcoSlo- No comments received as of 12/14/04

LEGAL LOT STATUS:

The Cambria Community Services District lot was legally created by deed at a time when that was a legal method of creating lots. The expansion area is proposed to be located on an easement on an adjoining lot that the Cambria Community Services District is acquiring by eminent domain.

Staff report prepared by Ryan Hostetter and reviewed by Matt Janssen.

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FINDINGS - EXHIBIT A
DRC2004-00093

Environmental Determination

- A. The project is exempt from environmental review pursuant to California Environmental Quality Act section 21080 (b) (5) and State CEQA Guidelines section 15270 (ED04-260).

Development Plan

- B. The proposed project or use is inconsistent with the San Luis Obispo County General Plan because:

Coastal Plan Policies

2. Coastal Plan Policy 1 for Land Uses Within or Adjacent to Environmentally Sensitive Habitats: Development adjacent to locations of environmentally sensitive habitats shall not significantly disrupt the resource. This project site is located within an Environmentally Sensitive Habitat Area (ESHA). The project proposes to expand the existing tank site area into a 10,000 square foot easement on the neighboring property to the north that is entirely within an undisturbed ESHA. The proposed project with this expansion will lead to the removal of approximately 27 Monterey Pine trees and 34 Coast Live Oaks, which is inconsistent with the intent of this policy. The project can be redesigned so that it does not impact the undisturbed ESHA on the northern 10,000 square foot easement by re-designing the tanks to remain entirely on the existing tank site.
3. Coastal Plan Policy 29 Protection of Terrestrial Habitats: Only uses dependent on the sensitive resources shall be permitted within the identified sensitive habitat portion of the site. In addition, development adjacent to ESHA shall be sited and designed to prevent impacts that would significantly degrade such areas and shall be compatible with the continuance of such habitat areas. This proposed project site includes the current tank site which is located on a disturbed site that does not contain ESHA, as well as the 10,000 square foot easement area which is not disturbed and does contain ESHA. This proposed project is not dependent on the Monterey Pine Forest, and should be re-designed so that it meets this policy and does not negatively impact the forest.
4. Coastal Plan Policy 30 Protection of Native Vegetation: Native trees and plant cover shall be protected wherever possible. The project as proposed will remove approximately 27 Monterey Pine trees and 34 Coast Live Oaks (both of which are native species), which is inconsistent with the intent of this policy. The project can be redesigned so it will not impact sensitive resources, and can be designed to avoid the 10,000 square foot ESHA. Staff feels that the project as proposed is inconsistent with this policy.
5. Coastal Plan Policy 35 Protection of Vegetation: The proposed tanks are not located to protect vegetation. Protection of vegetation includes rare or endangered plant species or vegetation that serves as a cover for endangered wildlife and shall be protected against any significant disruption of habitat value. All development shall be

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designed to disturb the minimum amount possible of wildlife or plant habitat. The project as proposed could potentially have a significant effect on six sensitive bird species that live in the pine forest: the northern harrier, white-tailed kite, Cooper's hawk, sharp-shinned hawk, long-eared owl, and loggerhead shrike. "Construction activities associated with the proposed project would remove all trees located in the northeast expansion area..." (p. 39 Initial Study/Mitigated Negative Declaration dated June 8, 2004) Staff does not support the project as proposed because it can be redesigned and relocated on the existing tank site which will not require the removal of Monterey pine trees on the 10,000 square foot expansion area.

Coastal Zone Land Use Ordinance

6. Sensitive Resource Area Required Findings 23.07.164 e: Any land use permit application within a Sensitive Resource Area shall be approved only where the review authority can make the following required findings:
 - a. The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design. The project as proposed does not meet this finding and will create a significant adverse effect on the Monterey Pine Forest.
 - b. Natural features and topography have been considered in the design and siting of all proposed physical improvements. This project does not meet this project because it can be re-designed to avoid the high value ESHA.
 - c. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve save and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource. This project does not meet this finding because the project can be redesigned or relocated to create less impact on the Monterey Pine Forest.
7. Environmentally Sensitive Habitats Required Findings 23.07.170 b: Approval of a land use permit for a project within or adjacent to an Environmentally Sensitive Habitat shall not occur unless the applicable review body first finds that:
 - a. There will be no significant negative impact on the identified sensitive habitat and the proposed use will be consistent with the biological continuance of the habitat. The proposed project is inconsistent with this required finding because it will remove sensitive habitat. While replacement of the habitat is proposed, the replacement is located off site which will not help the continuance of the biological species on the project site. The project as proposed will have a negative impact to the sensitive resources on the project site.
 - b. The proposed use will not significantly disrupt the habitat. This project will significantly disrupt the habitat on site because it will remove approximately 27 Monterey Pine trees and 34 Coast Live Oaks, which is inconsistent with the intent of this policy.
7. Public Utility Facilities 23.08.288 d: The Coastal Zone Land Use Ordinance requires the approval body make a finding that there is no other feasible location on or off-site the property when a project is proposed within an ESHA. This finding cannot be made because at least one other feasible less environmentally damaging alternative

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exists (i.e. the original project description prior to this application for one tank on the existing CCSD lot without an easement on the neighboring property).

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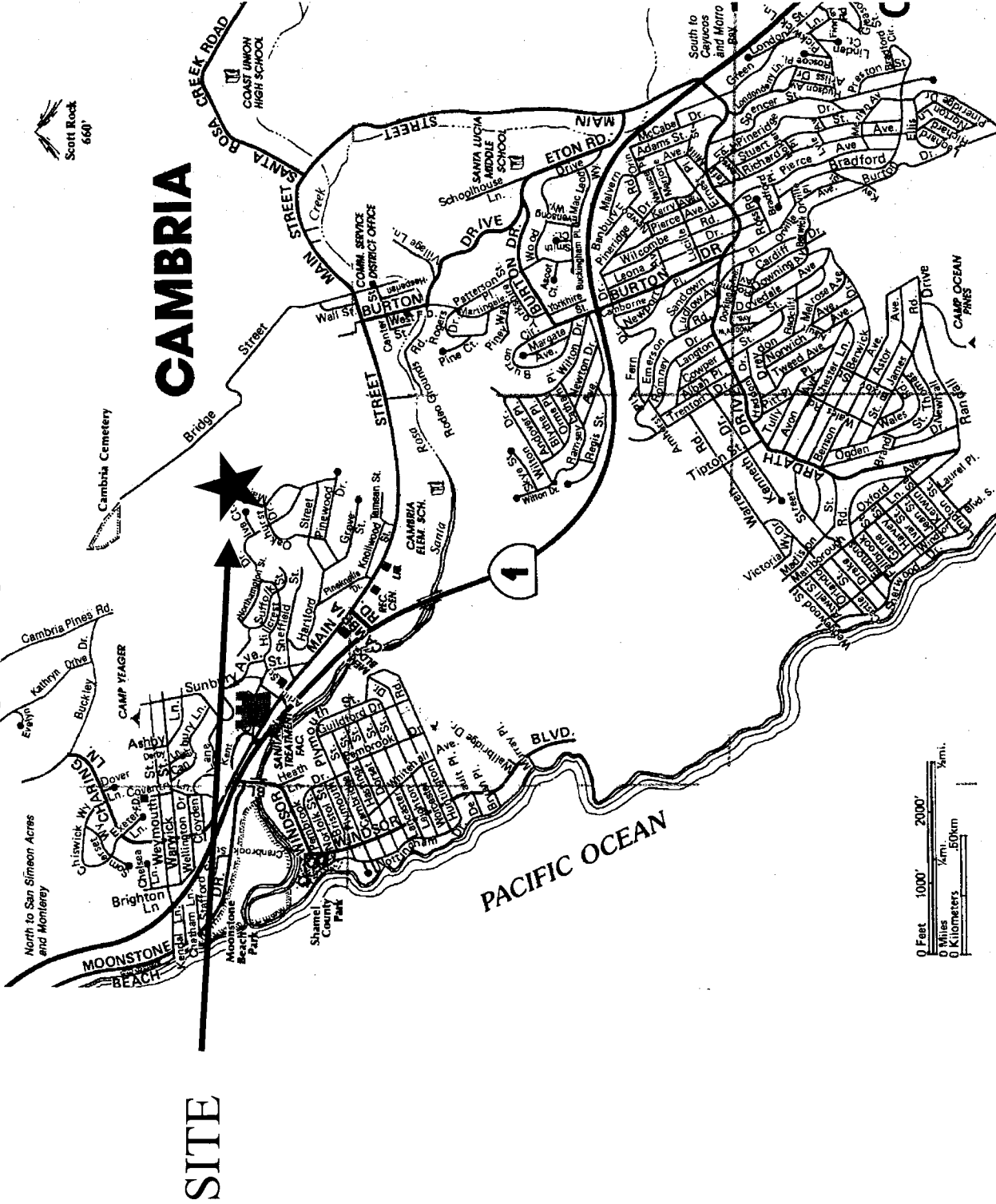
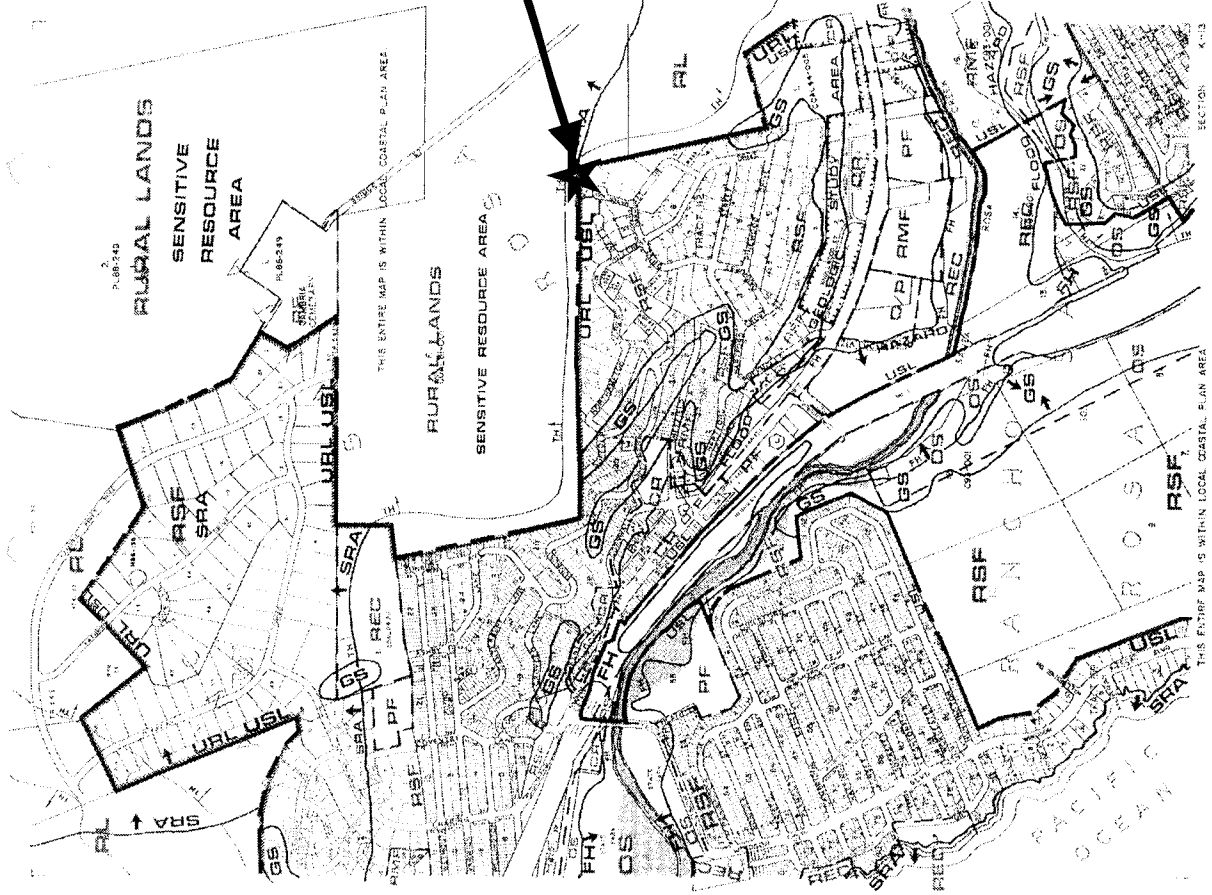


Exhibit
Vicinity Map



Project
Conditional Use Permit
CCSD/DRC2004-00093

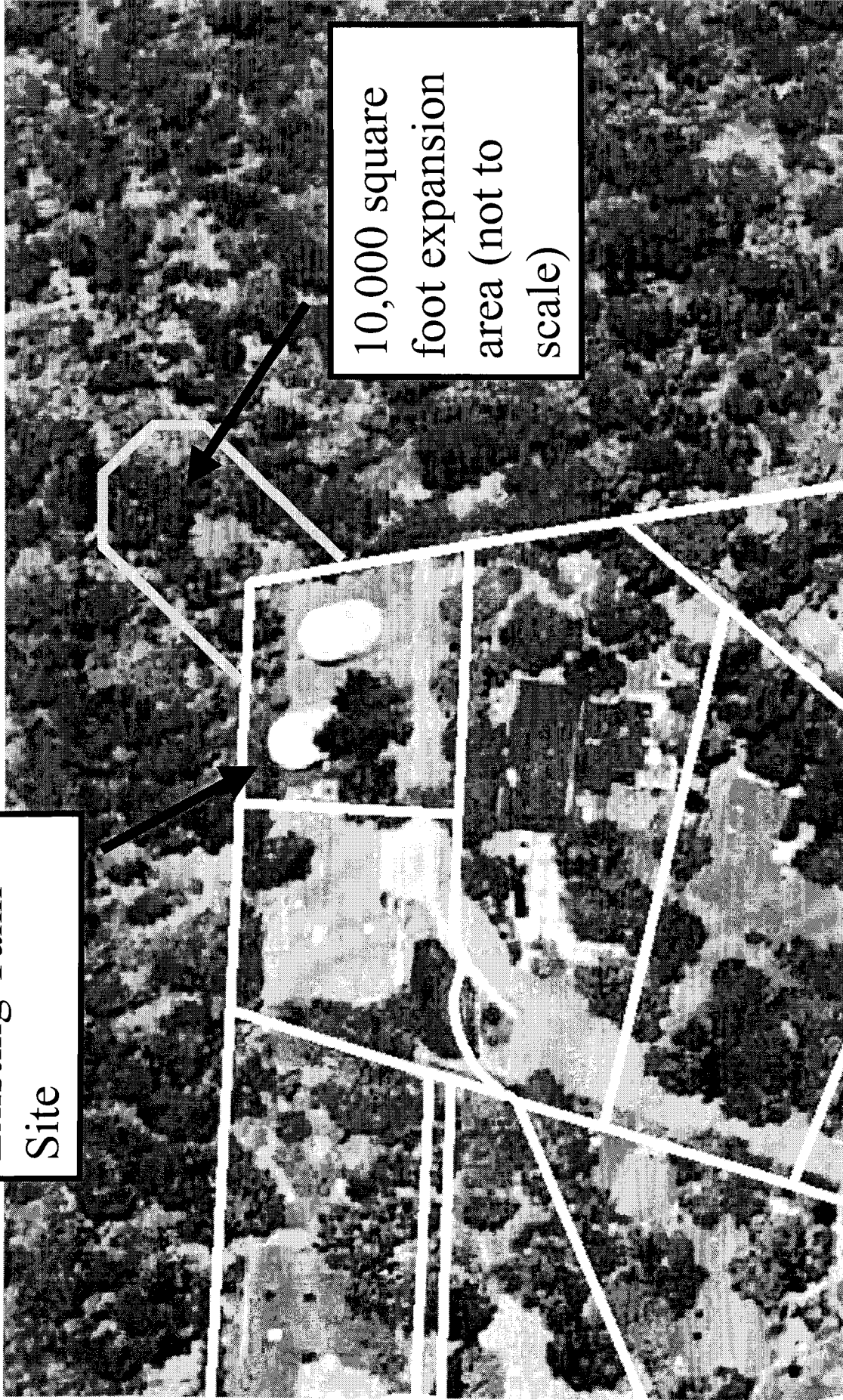


Project
Conditional Use Permit
CCSD/DRC2004-00093



Exhibit
Land Use Category Map – Residential Single
Family & Rural Lands

Existing Tank
Site



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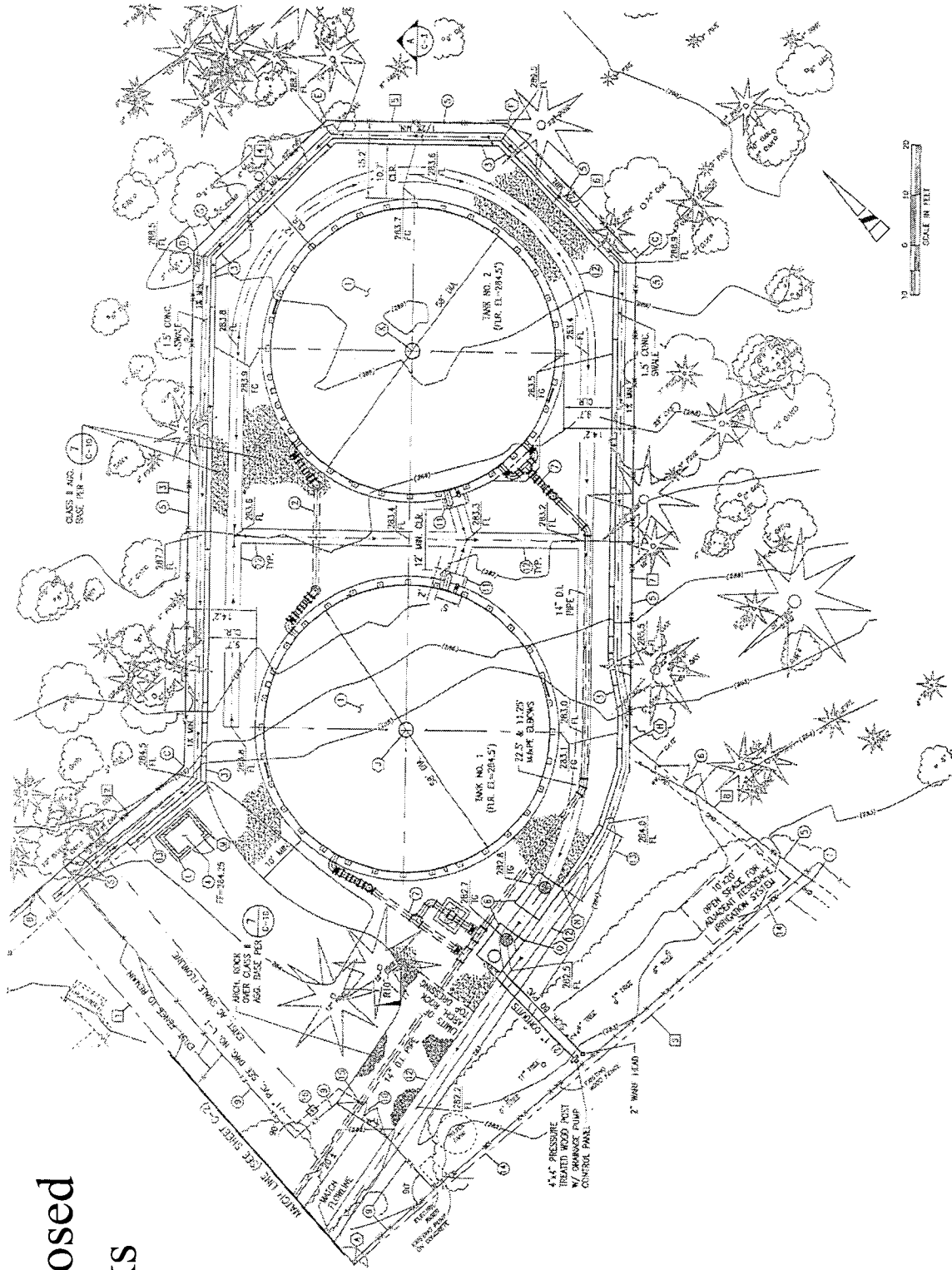
Project
Conditional Use Permit
CCSD/DRC2004-00093

Exhibit
Vicinity Map



Exhibit
Existing Site Plan-Hatched area = 10,000
square foot easement

Proposed Tanks

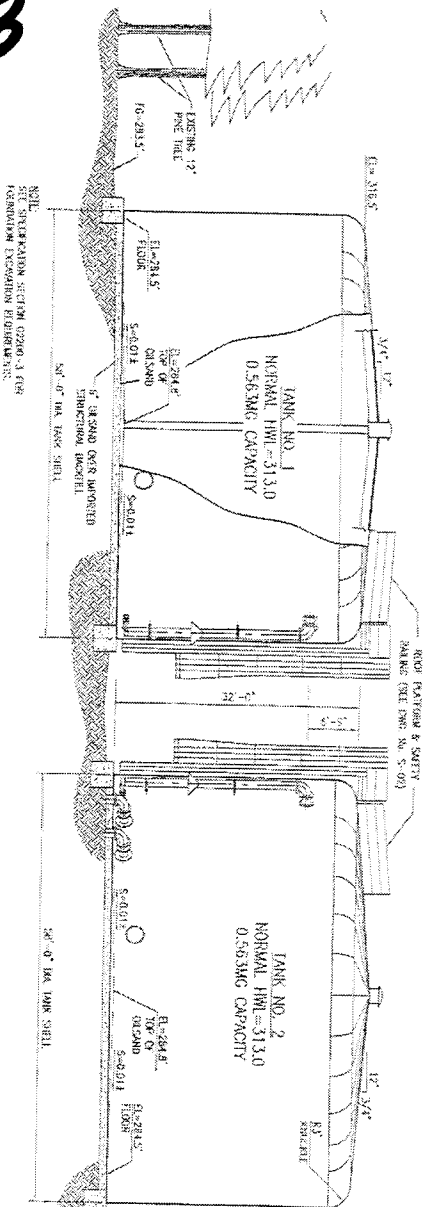


Project —
Conditional Use Permit
CCSD/DRC2004-00093

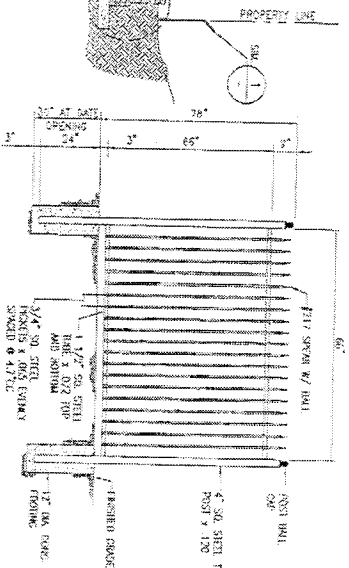


Exhibit —
Proposed Site Plan

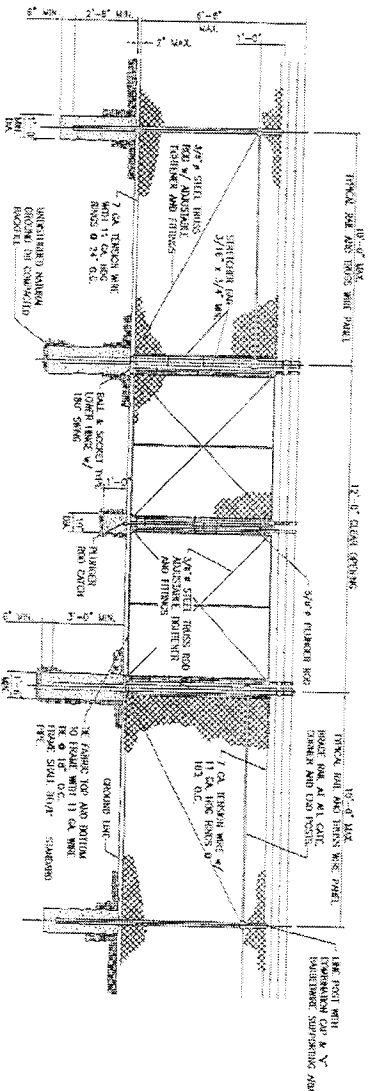
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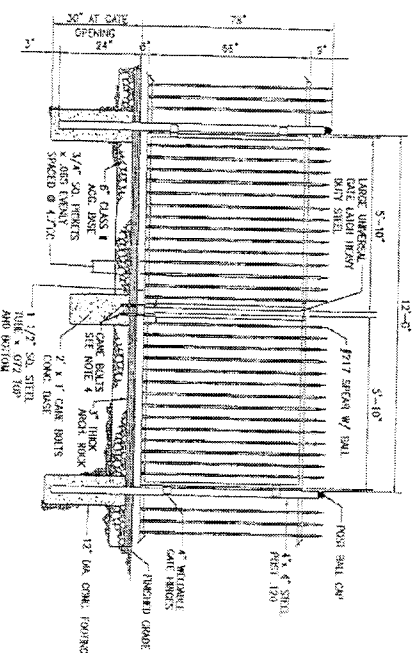
SITE SECTION A
SCALE 1/8" = 1'-0"



TYPICAL SECURITY ORNAMENTAL FENCE
SCALE 1/8" = 1'-0"



TYPICAL SECURITY FENCE AND GATE DETAIL (REAR ACCESS)
SCALE 1/8" = 1'-0"



ORNAMENTAL HINGED GATE
SCALE 1/8" = 1'-0"

- NOTE:
1. FENCE SHALL BE POWERED WITH SYSTEM NO. 13 PER SPECIFICATION ATTACHED.
 2. FENCE SHALL BE CHECKED BY OWNER.
 3. FENCE SHALL BE CHECKED BY OWNER.

Project

Conditional Use Permit
CCSD/DR2004-00093



Exhibit

Elevations of tanks and fencing

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CAMBRIA COMMUNITY SERVICES DISTRICT

DIRECTORS:

JOAN COBIN, President
GREGORY SANDERS, Vice President
PETER CHALDECOTT
ILAN FUNKE-BILU
DONALD VILLENEUVE



OFFICERS:

TAMMY RUDOCK General Manager
ARTHER R. MONTANDON, District Counsel
KATHY CHOATE, District Clerk

1316 Tamson Drive, Suite 201 • P.O. Box 65 • Cambria CA 93428
Telephone (805) 927-6223 • Facsimile (805) 927-5584

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DEC 02 2004

Planning & Bldg

November 30, 2004

Subject: Pine Knolls Water Storage Tanks Reconstruction

Dear Elected and Appointed Officials:

The Community of Cambria is facing a serious fire emergency. We wanted you to be to be aware of the gravity of the situation and our efforts to protect Cambria from disaster.

Enclosed, for your information, is a letter the CCSD has previously sent to the staffs of the County of San Luis Obispo and the California Coastal Commission.

Sincerely Yours,

Arther R. Montandon
District Counsel

Cc. Jerry Haleva, Sergeant Major and Associates

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CAMBRIA COMMUNITY SERVICES DISTRICT

DIRECTORS:

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OFFICERS:

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November 29, 2004

Victor Holanda
Planning Director
San Luis Obispo Planning and Building
County of San Luis Obispo
County Government Center
San Luis Obispo, California 93408

Subject: Pine Knolls Water Tanks Project

Dear Mr. Holanda:

Thank you and others for participating in the telephone conference last Tuesday, November 23, 2004. The participants from San Luis County included Pat Beck, Matt Janssen, and Deputy County Counsel James Orton. Coastal Commission staff included Lisa Haage, Chief of Enforcement; Diane Landry, Jonathon Bishop; and Sandra Goldberg, Staff Counsel. The CCSD's participation included Arther R. Montandon, District Counsel; Steve Kaufman Attorney from Richards, Watson & Gershon; Bob Gresens, District Engineer; Jim Adams, Water Systems Supervisor; Tammy Rudock, General Manager; and Mike Nunley and Cesar Romero, Boyle Engineering, who have been analyzing the alternative construction possibilities of the Pine Knolls Tanks. I believe our exchange of information and ideas assisted us all to more clearly understand each other's concerns and positions.

The CCSD representatives have, throughout the process of getting the Pine Knolls Tanks reconstructed, proactively attempted to respond to all of the County's and the Coastal Commission's concerns. We have provided all of our information and directed our staff and consultants to be available to immediately respond to any questions and develop additional analysis and information to assist County and Coastal Commission staff in evaluating the emergency Cambria is facing and the project designs that could effectively eliminate the immediate danger to all of our citizens and the environment. The CCSD has spent thousands of staff and consultant hours and hundreds of thousands of dollars attempting to resolve our differences. This collaborative approach to intergovernmental

cooperation, though sometimes trying, almost always results in a product that is better for the constituencies we all serve. Unfortunately, that has not been the case for the Pine Knolls Water Tanks project.

Justification for an Emergency Permit

We have discussed the immediate and real danger facing our constituents and the environment. CCSD staff throughout this process provided unrefuted evidence that an extraordinary emergency presently exists in Cambria. The facts we presented are summarized as follows.

Fire Danger. Since the CCSD's Board of Directors' declaration of a Water Code Section 350 water shortage emergency three years ago, it has as the law requires, been working diligently on the projects needed to end the emergency.

The declaration was based upon two factual findings: 1) that there was not a dependable water supply for current and future growth; and 2) that by applying national fire standards Cambria's water storage was 2,000,000 gallons short of what is needed to provide adequate water to fight fires. Please note that calculation of this shortfall was based upon two assumptions that are not correct. These are that the current water storage tanks are always full and that Cambria does not have a unique topography or significant combustible flora that significantly increases fire danger. The reality is that the water tanks are seldom full, due to the fact that the CCSD's customers use the same water used to fight fires, and Cambria exists on a series of rolling hills, in and surrounded by a forest, with many diseased trees. To further aggravate the fire danger the County and the Coastal Commission over many years have approved many wooden structures that are built very close together. The close proximity of the existing structures coupled with a relatively high fuel load from vegetation significantly increases our fire danger. Due to this significant fire safety problem, the CCSD Board of Directors directed staff to prioritize its limited funds and effort towards increasing water storage to minimize this fire danger.

The recognition of the fire safety problem is one thing, the process to decide what to do and how to pay for it is much more difficult. The first step taken was to evaluate the integrity and operation of the water delivery system. Needed upgrades to the CCSD's pipe delivery system were identified and made first. The existing 200,000-gallon capacity Pine Knolls tanks were chosen as the CCSD's first storage replacement project because the Pine Knolls tanks are the most critical storage facility in the entire CCSD's water storage and delivery system. The CCSD staff believes replacement at this location was the best option. The CCSD could reuse an existing tank site, which is at the best elevation to deliver gravity fed water and not relocate its water mains, many of which are located in ESHAs. Other sites were considered and rejected due to functionality, the additional negative impact on the environment, and extra costs.

The proposed project will increase the capacity of the tanks from 200,000 gallons to 1,100,000 gallons of water, less than half of the additional water storage needed by

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Cambria. The tanks would continue to be located at the highest point of the water system to enable the gravity feed of water to all of the other storage tanks. The gravity feed of water not only avoids excessive energy use, it provides a viable water source that will not be rendered useless during an emergency, where the energy to run pumps may be lost. Water from the Pine Knolls tanks is delivered to all of the other water storage tanks. The elevated location and capacity of these tanks are critical to the effective operation of Cambria's whole water delivery system. When the Pine Knolls tanks are upgraded the other water storage tanks could then be upgraded to provide the additional 1,100,000 gallons of water storage needed to fight fires.

If the Pine Knolls tanks are not upgraded to increase water storage capacity immediately, a fire could significantly impact the safety and health of the whole community and local environment. If a fire starts during peak customer water usage and cannot be contained in the original structure the CCSD will not have enough water to fight the fire even if all its wells are pumping at full capacity. If the fire involves more than two structures and the current water storage tanks are full the CCSD will not have enough water to fight the fire even if all of its wells are pumping at full capacity. If a forest fire starts, like the Strawberry Canyon fire a year ago, and the fire department cannot suppress it before it spreads, the CCSD will not have enough water to fight the fire even if all of its wells are pumping at full capacity. Under any of these very possible scenarios the whole community of Cambria and its forests would burn to the ground.

Danger Posed by Earthquakes. It was only in the past few weeks that the CCSD was made aware of the specific current seismic capacity of the Pine Knolls Tanks. In their current condition, these thirty-two foot tall tanks are only seismically safe up to a water level of six feet. As you were told by the CCSD's water operations staff, the CCSD water system cannot operate if the Pine Knolls tanks are at that level. Daily domestic demand will cause the system to intake air even if all of the CCSD's wells are pumping at full capacity. The intake of air will cause significant damage to customer water pipes and to the CCSD's water infrastructure system. If this damage occurs, the CCSD will not be able to deliver water to its customers or to fight fires. The repair of this pipe damage would result in the significant disruption to the environment since many of the CCSD's pipes that would need to be repaired are in or near ESHAs and would cost a significant amount of money. To avoid the fire danger, the infrastructure system damage, and the potential environmental damage, the CCSD is currently operating these tanks at water levels that make them seismically unsafe, despite the threat of an earthquake.

The dangers of a sudden earthquake that will damage these tanks are very real. We experienced a catastrophic earthquake a year ago with an epicenter ten miles from Cambria. It damaged similar water storage tanks thirty miles east of Cambria. We believe the CCSD's tanks were spared damage this time because the earthquake occurred at a time when the water levels were low.

The State Legislature has recognized the significant danger of an earthquake in California at any time. (See Government Code Sections 8871, 8878.51). In Government Code

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Section 8899.10 the California Legislature specifically finds that, "...the citizens of California live under the constant shadow of death, personal injury, and property damage from earthquakes." On November 26, 2004, there were 17 earthquakes in the Cambria area, two of which are considered "big earthquakes" by the United States Geographical Survey. One was a 3.2 magnitude earthquake four miles from Parkfield and the larger was a 3.4 magnitude earthquake nine miles from San Simeon. Just yesterday, on November 28, 2004 there was an even larger 4.2 magnitude earthquake seven miles from Parkfield.

If a significant earthquake damages the Pine Knolls tanks there will be damage to the surrounding neighborhood and to the downstream neighborhood. There would not be enough water storage to provide for the daily sanitary needs of the entire community. All damaging earthquakes significantly increase the fire danger and there would be no water to fight a fire, and as stated above the community and its surrounding forest would burn to the ground.

As the CCSO Board, staff, and consultants have stated over and over again the situation is a serious emergency that requires immediate action to protect life, property, and the environment.

Project Development

CCSO staff and consultants believe that the modified two-tank design is environmentally superior, will cause the least disruption to the forest habitat, and will minimize the time the community and forest will be in danger because it can be built now. As you know the CCSO staff and consultants have:

1. Designed the original concrete tank project relying on a map acquired from County's web site. Although the boundaries of this map were incorrect from our discussions with County planning, the Coastal Commission staff still refers to a similar mapped ESHA boundary. For example, the modified two steel tank layout avoids much of the ESHA area identified by the "TH" boundary shown on the Commission's drawing K13.
2. Provided 15 copies of the Initial Study/Mitigated Negative Declaration to the state clearinghouse on June 8, 2004, advertised the current design's Notice of Intent to Adopt a Negative Declaration in The Tribune newspaper on July 15, 2004, and fully noticed the project's July 22, 2004 public hearing.
3. Conducted the CEQA hearing and approved the current design during a televised public meeting.
4. Conducted applicable environmental review and considered and approved a mitigated negative declaration at two televised public meetings. The significant mitigations were approved after comments from the County and State Fish and Game were received
5. Awarded the bid to a contractor at a televised public meeting.

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6. Adopted a resolution at a televised public meeting authorizing the commencement of a Superior Court action to acquire an additional 9,115 square feet of property.
7. Acquired a right to possess the extra 9,115 square feet after two hearings before the court.
8. Received an ECDP from the County to commence construction in a time frame to minimize impact on the surrounding habitat.
9. Told the contractor to be ready to proceed.
10. Pursuant to the County's ECDP process the CCSD filed an application for a CDP within 30 days of the granting of the ECDP.

After all of the CCSD's very public effort to address Cambria's emergency situation the Coastal Commission issued a Cease and Desist Order and the County purported to revoke the ECDP.

Second ECDP

In the interest of cooperating with the County and the Coastal Commission staff, and to remedy the emergency facing Cambria, the CCSD applied for a second ECDP with more information supporting the emergency and a modified two-tank design.

We discussed your November 19, 2004, letter that denied the CCSD's second application for an Emergency Coastal Development Permit ("ECDP") for the reconstruction of the Pine Knolls water storage tanks. The letter states that the denial was based upon the need for a submittal of a "Public Lot" application and that a feasible project exists with less impact to the Environmentally Sensitive Habitat Area ("ESHA").

The CCSD included a modified two-tank design in its second application reducing the amount of land needed for the tanks to approximately the area needed to construct the original square tank considered by the CCSD (7,000 square feet). County and Coastal Commission staff stated that they would not approve this modified two-tank project for an ECDP and could not recommend it for a regular Coastal Development Permit ("CDP") and that the original square tank was environmentally superior.

County and Coastal staff stated that the only ECDP that could be approved is for the seismic retrofit of the existing tanks to meet the CCSD's current water storage needs despite the fact that these retrofitted tanks will only provide two thirds of their previous capacity or 133,333 gallons of storage capacity. This will severely increase the danger of the current fire emergency. We have estimated that this will take at least six months, cost over \$100,000 dollars for tanks that will be torn down, and result in tanks with one third less water capacity to fight a fire. In this same amount of time the CCSD could have one of the modified two tanks project constructed, adding 550,000 gallons of water storage for Cambria.

While these inadequate retrofitted tanks are serving Cambria you suggested that the CCSD design a square tank project that will fit on the land currently owned by the

CCSD, conduct the required environmental review, process a County Public Lot application, and if this application is approved by the Planning Director and the County Subdivision Review Board, after any appeals to the Board of Supervisors and the Coastal Commission, and if the project is still viable and doesn't require redesign or subsequent environmental review, the CCSD could apply to the County for a CDP to be considered by the County Planning Commission. If the CDP is granted, the Planning Commission's decision could be appealed to the Board of Supervisors and then to the Coastal Commission. If the CDP survives all appeals, and there are no lawsuits, the CCSD may then publicly bid the project, and construct the tanks. We estimate that this process, without lawsuits, will take over two years to get the square tank into service. All this time the community and the environment will continue to be in extreme danger of a catastrophic fire.

The square tank design has significant impacts on the mapped ESHA. Since the CCSD will have to tear down the tanks it spent over \$100,000 retrofitting to construct your preferred square tank. County and Coastal Staff recommended that the project include temporary water storage tanks (200,000 gallons) to serve Cambria, placed in or near the ESHA until the new square tank can be put into service. The CCSD's consultants have concluded that this overall design will require the destruction of over 12,000 square feet of the forest habitat. The CCSD's modified two-tank design will only require 5,000 square feet. It was County and Coastal Commission staff's opinion that this option was environmentally superior because the habitat would grow back. Our consultants state that it could take decades for the habitat to grow back and that our modified design is environmentally superior.

Finally, since the Pine Knolls tanks play such a critical roll in the entire CCSD distribution system, it is also important to provide two tanks as opposed to one for reliability. For example, the current two-tank design concept allows taking one tank out of service for maintenance activities. Typically, tanks of this type are painted about once every 15 years. Having two tanks at this location allows for periodic painting as well as any unforeseen maintenance needs. Therefore, concepts discussed during the November 23, 2004 telephone conference suggesting one single tank do not provide an acceptable level of reliability.

Legal Issues

Though CCSD staff did not argue legal issues during our telephone conference, we disagree with many of the legal positions of the County and Coastal Commission.

First, we dispute that the modified Pine Knolls tank project is in a mapped ESHA. We have obtained the map adopted by the County and approved by the Coastal Commission from Coastal Commission staff. It places the ESHA one hundred feet from the CCSD's jurisdictional border. We designed the project to avoid any significant impact on the ESHA. No one has provided the CCSD with proof that this mapped ESHA incorporated by a land use ordinance has ever been moved. If it is modified it legally requires an official act of "equal dignity." In other words, since it was adopted by ordinance and

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approved by the Coastal Commission, it must under go the same process to be amended. We can find no proof that the map given to us by the Coastal Commission Staff to design the Pine Knolls tanks was ever amended.

Second, Coastal Commission staff has stated that the CCSD's acquisition of land through condemnation is a development because it is a "land division" (Public Resources Code Section 30106). As we stated, the CCSD is acquiring the Pine Knolls expansion site in Superior Court through its powers of eminent domain. Currently the CCSD only has an order of possession for the site. This court process is superior to your statutory requirement that land divisions require a CDP. See Wells Fargo Bank vs. Town of Woodside, 33 Cal. 3rd 379 (1983). To avoid any continued argument that this is a land division we have amended our pleadings to condemn only an easement. This is done at the suggestion of Coastal Commission staff. It will also allow the CCSD to abandon any portion of the easement it does not need due to the modified design pursuant to a summary statutory abandonment process.

The County has taken the position that the CCSD's Superior Court acquisition of property is subject to the Subdivision Map Act as implemented by SLO County Code pursuant to SLOCC 21.02.010 and requires a "Public lot" determination by the Planning Director. The County's position is that all land conveyed to or from a governmental agency has to go through this process. If the CCSD's acquisition is subject to the County's ordinance it requires a LCP. (SLCCC 21.01.010).

As stated by CCSD staff during our telephone conference call, this lot is subject to the SLOCC 21.02.010, why weren't the CCSD's 500+ lot transfers in the past three years subject to the "Public Lot" process? In addition, the Subdivision Map Act places the burden on the County, based upon substantial evidence, to find that a parcel map is required. (Government Code Section 66428). It is the County's burden to demonstrate based on substantial evidence that the CCSD is subject to the Subdivision Map Act.

If the County takes this legal position for easements, such as the one the CCSD is acquiring through eminent domain we ask to see all the "Public Lot" determinations for County easements for the past six months before we reconsider applying for a Public Lot determination. In addition, it is the CCSD's position that it is not subject to this ordinance due to the rationale stated in Wells Fargo Bank vs. Town of Woodside, 33 Cal. 3rd 379 (1983). In addition the CCSD is not a "Subdivider" and this acquisition is not a "Subdivision" under the Act. (Government Code Sections 66423, 66424, and 66426.5, see also, 75 Ops. Atty. Gen. 136 (1992) citing Morris vs. Reclamation District No. 108, 17 Cal. 2nd 43 (1941), which held public agencies and public officers are not subject to the Subdivision Map Act).

Coastal staff also stated that the CCSD could not file and maintain an action for a "taking" of its property. Inverse condemnation is a viable cause of action available to the CCSD against the County and the Coastal Commission. In Marin Municipal Water District vs. City of Mill Valley, 202 Cal. App. 3rd 1161 (1988), the court citing the

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California Supreme Court held, "...a public entity whose property has been damaged by another public entity suffers no less a taking merely because of its public entity status." The CCSD is protected by Public Resources Code Section 30010, which prohibits the County and Commission from taking or damaging private property without just compensation. As such, the CCSD should enjoy the same deference given to single-family houses and other structures the County and Commission have approved in and near ESHA's for the past 30+ years.

Even without the deference given single-family development the CCSD is proposing an ESHA dependant use compatible with the ESHA that does not have a significant impact on the ESHA pursuant to Public Resources Code Section 30240. The Pine Knolls tanks are dependant of the ESHA's elevation to provide the gravity feed required for public safety. The tanks are not only compatible with the ESHA, their existence protects the ESHA from total destruction by fire. The use is not new. It is two water storage tanks that replace two water storage tanks. There are no occupied structures and there is not a more environmentally benign use next to the ESHA of concern.

We additionally believe that the focus on ESHA has unduly overlooked the other provisions of the LCP, which carry equal, and perhaps even more important, weight in the case of this water storage facility. Hazard Policy 9 (page 11-4) provides: "Fire hazard areas shall be defined as those having potential for catastrophic fire. The county shall designate and show on the Hazards maps those high risk fire areas as delineated by the State Division of Forestry . . . THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO CHAPTER 23.05.082 OF THE CZLUO.]" Section 23.05.082, entitled "Fire Safety Standards," in turn, provides: "In areas where fire protection is provided by another official agency (e.g., a community services district, etc.), new uses shall comply with such fire safety standards as required by the fire protection agency." (Emphasis added.) CCSD is the fire protection agency in this instance, and this project is necessary to comply with the fire safety standards required by the District. This policy is mandatory; it cannot be ignored. Under settled rules of statutory construction, it must be harmonized or "balanced" with the ESHA policy in the LCP, but also applied in a way that is most protective coastal resources. This project does exactly that. Thus, the project complies with the requirements of the LCP governing emergency permits. It has had public comment. The emergency nature of the project requiring immediate action is heightened by the recent Boyle Engineering report (11/2/04), which now constrains the District's ability to store water in the existing tanks to a water level of six feet to avoid seismic safety problems. As previously indicated in our application, the work must proceed now to avoid the heavy rainy season in January, as well as the onset of the 2005 bird nesting season."

Also, neither the County nor the Commission has followed their procedures for revocation of the first emergency permit. The CCSD considers the first ECDP issued to be in full force and effect until each agency goes through the substantive and procedural due process required to revoke a development permit. We intend to fully participate in

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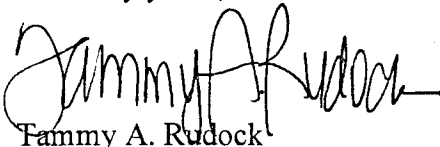
the required process and will appeal each adverse action. For example, the CCSD staff and consultants will appear at the January 2005 SLO County Planning Commission hearing as required by the ECDP process and present the CCSD's position as set forth in this letter.

Conclusion

Finally, we have worked diligently with you and the Coastal staff and cooperated with all agencies to expeditiously build a much needed project, which will reduce the fire and earthquake danger to Cambria, in a manner that serves all environmental interests. It has always been our opinion that Government Code Section 53091 exempts the CCSD from applying for and obtaining a CDP. Nothing in the information submitted by Ms. Goldberg or Ms. Christie has changed our position that the CCSD is exempt. They cite no binding legal authority that supports their position that the CCSD is exempt from the CDP process if it builds a water storage facility. We have spoken to representatives from other special districts and members of ACWA that have successfully refused to obtain a LCP for the facilities enumerated in Government Code Section 53091. Subsequent research has only confirmed our position that LCP's and related ordinance are local zoning ordinances. Yost vs. Thomas, 36 Cal. 3rd 561 (1984).

We request that you immediately reconsider issuance of the emergency permit for the environmentally superior modified two tank version of the Pine Knolls Tanks project. If County does not issue it by December 6, 2004 we will be required to take immediate steps to protect our citizens and our environment from the very real dangers of a catastrophic earthquake and fire and construct the modified alternative with all haste and pursue all available remedies in court.

Sincerely yours,



Tammy A. Rudock
General Manager

C: Board of Directors
Arther R. Montandon, District Counsel
Bob Gresens, District Engineer
Charles Lester, Deputy Director, CCC
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